United States Court of Appeals

for the Second Circuit

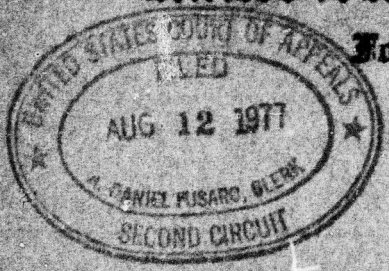
APPELLEE'S BRIEF

No. 77-7194

In the

United States Court of Appeals

For the Second Circuit



ELI RAITPORT,

Plaintiff-Appellant,

vs.

GENERAL ELECTRIC COMPANY, WESTINGHOUSE CORPORATION, RADIO CORPORATION OF AMERICA, AND WHIRLPOOL CORPORATION,

Defendant-Appellees,

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DISMISSING THE ACTION IN 74 CIV. 2123(CLB).

BRIEF FOR DEFENDANT-APPELLEE, WHIRLPOOL CORPORATION.

ALVIN K. HELLERSTEIN,
ROBERT P. STEIN,
STROOCK & STROOCK & LAVAN,
61 Broadway,
New York, New York 10006,
(212) 425-5200,

STANLEY M. LIPNICK,
RICHARD K. WRAY,
ARNSTEIN, GLUCK, WEITZENFELD & MINOW,
75th Floor, Sears Tower,
Chicago, Illinois 60606,
(312) 876-7100,
Attorneys for Whirlpool Corporation.

Gunthorp-Warren Printing Company, Chicago ▪ Financial 6-6365

280 PARK AVENUE
NEW YORK, N. Y. 10017
(212) 732-1040

1747 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006
(202) 872-0013

20, PLACE VENDÔME, 75001 PARIS
TELEPHONE (1) 260-34-05

66 GRESHAM ST., LONDON EC2V 7LB
TELEPHONE (01) 600 6691

AVENUE LOUISE, 89, 1050 BRUSSELS
TELEPHONE (02) 538.00.70

WHITE & CASE
14 WALL STREET
NEW YORK, N. Y. 10005
(212) 732-1040

CABLES	TELEX
WHITECASE, NEW YORK	126201 233188
WHITECASE, WASHINGTON	89543
WHITECASE, PARIS	220242
WHITECASE, LONDON	884757
WHITECASE, BRUSSELS	23100

MF:EME

August 12, 1977

Office of the Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

re: Raitport v. General Electric Company, et al., No. 77-7194

Dear Sirs:

This firm represents the defendant-appellee, General Electric Company, in this matter. We are filing no brief on behalf of our client inasmuch as we believe that issues are fully treated in the briefs filed by counsel for the defendants-appellees, Westinghouse Electric Corporation and Whirlpool Corporation. We rely upon those briefs and the record below, including Judge Briant's opinion and judgment dismissing the complaint.

Respectfully yours,

Macdonald Flinn

cc: Mr. Eli Raitport
1807 Mower Street
Philadelphia, Pennsylvania 19152

Donald S. Parker, Esq.
Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005

cc: Bruce E. Pindyck, Esq.
Olwine, Connelly, Chase,
O'Donnell & Weyher
299 Park Avenue
New York, New York 10017

Robert P. Stein, Esq.
Stroock & Stroock & Lavan
61 Broadway
New York, New York 10006

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GENERAL ELECTRIC COMPANY, WESTINGHOUSE CORPORATION, RADIO CORPORATION OF AMERICA, AND WHIRLPOOL CORPORATION,

Defendant-Appellees,

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DISMISSING THE ACTION IN 74 CIV. 2123(CLB).

BRIEF FOR DEFENDANT-APPELLEE, WHIRLPOOL CORPORATION.

COUNTERSTATEMENT OF ISSUES PRESENTED.

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1. Whether the trial court's order dismissing with prejudice for failure to prosecute was an abuse of discretion.

2. Whether the trial court's oral explanation on the record of his reasons for concluding that there was a failure to prosecute warranting dismissal with prejudice was an adequate form of findings and conclusions.

COUNTERSTATEMENT OF THE CASE.

This is an appeal from the District Court's order of March 9, 1977 dismissing the action with prejudice for failure to prosecute.

Plaintiff-appellant, Eli Raitport ("Raitport" hereinafter) commenced this action *pro se* in May, 1974, attempting to charge the defendants with numerous statutory offenses because each had declined to finance production of, and purchase certain switches and vibration isolators developed by Raitport. Whirlpool Corporation, in whose behalf this brief is filed, moved to dismiss the complaint against it for failure to state a claim upon which relief could be granted. A similar motion was made by Westinghouse Electric Corporation, joined by RCA Corporation. By Memorandum Order filed August 1, 1974, the trial court held the complaint insufficient, and granted leave to amend.

Raitport amended his complaint in August, 1974, alleging, for the first time, that defendants had conspired to refuse to deal with him, thereby violating the Sherman Act, 15 U. S. C. § 1 *et seq.* Whirlpool moved to dismiss the amended complaint, relying upon the affidavits of George Ellspermann, John Pielemeier, George Myers, John Traube and Ronald Hahn, the Whirlpool employees who had decided that the corporation was not interested in Raitport's inventions. These affidavits[1] are uncontroverted to this day and establish that Whirlpool's decision was unilateral, not conspiratorial.

On December 5, 1974, the trial court reaffirmed his decision to dismiss all claims based upon unilateral refusals to deal with Raitport, and also ruled that the antitrust conspiracy allega-

1. The affidavits were filed as attachments to the "Motion of Defendant, Whirlpool Corporation, to Dismiss the Amendment to the Complaint Against It" (Index to Record, Doc. 41), and are reprinted in the Appendix to this brief as Exhibits A, B, C, D and E.

tions did state a claim for which relief could be granted. He did not mention Whirlpool's affidavits.

Confronted with the necessity of substantiating his accusation that Whirlpool had conspired, Raitport, in April 1975, moved the court to finance his litigation expenses, including discovery. That motion was denied on May 21, 1975. Raitport's appeal from that ruling was dismissed by this Court (No. 75-8330, January 7, 1976), and his petition for certiorari was denied, 48 L. Ed. 2d 822, *rehearing denied* 49 L. Ed. 2d 1201 (1976). In connection with that unsuccessful motion, Raitport repeatedly represented that he cannot bear the cost of this litigation, has no source of financing available, and is financially unable to conduct discovery.[2]

Not surprisingly, Raitport has commenced no discovery, as he concedes at page 1 of his brief. On the other hand, Whirlpool and the other defendants did attempt to conduct discovery by requesting Raitport to produce designated documents and by noticing his deposition. When Raitport was deposed on February 8, 1977, he refused to answer numerous relevant questions on the basis of some vague "privilege" which he was unwilling or unable to explain (E.g., Dep. Tr. 7-10, 41-49). He also failed to produce *any* documents in response to defendant's production request, claiming that *all relevant documents* had been *transferred* by him, *subsequent to filing this action*, to the stockholders of a corporation he had previously organized (Dep. Tr. 85-86, 91). *He refused to identify the transferees of the requested documents* (Dep. Tr. 207-208).

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2. As examples of such admissions: "Affidavit in Support to Request for Reconsideration", June 1975, ". . . I simply do not have the funds necessary to conduct discovery." p. 1. "Supplemental Memorandum of Law to Plaintiff's Motion to Authorize Courts Payment of Plaintiff's Litigation Expenses", September 1975, "In case at bar, before the court are [sic] uncontroverted evidence that plaintiff does not have presently the cash to pay the cost of discovery, . . ." p. 4; ". . . without this financial assistance plaintiff cannot obtain the evidence to bear the burden of proof." p. 11. (Index to Record, Docs. 37, 43.)

Raitport's failure to make a timely appearance at the next scheduled pretrial conference[3] prevented the trial court from inquiring into the manner in which he had frustrated defendants' discovery (App., page A12). Thereupon, Whirlpool and the other defendants joined in an oral motion to dismiss the action for want of prosecution, because Raitport had failed to seek the discovery without which he could not prevail at trial and had also refused to provide to Whirlpool and the other defendants the discovery to which they were entitled (App., page A13).

In the Order from which this appeal is taken, the trial court dismissed Raitport's action in its entirety, with prejudice. Raitport's failure to appear at the pretrial conference, failure to undertake discovery, failure to provide proper discovery to defendants, and his unsupported and unsupportable accusations of wrongdoing against the federal judiciary (App., page A14), were factors upon which the trial court explicitly relied in concluding that Raitport's conduct of this litigation is and has been frivolous and that dismissal with prejudice for failure to prosecute was appropriate (App., page A15).

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3. The transcript is reproduced in the Appendix to this brief as Exhibit F.

ARGUMENT.

A. The Trial Court Did Not Abuse Its Discretion by Dismissing with Prejudice for Failure to Prosecute.

The standard of review applicable to a dismissal for failure to prosecute is whether the District Court abused its discretion. *Link* v. *Wabash Railroad Co.*, 370 U. S. 626, 633, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962). This court has often recognized the inherent power of the trial courts to manage their own affairs, including dismissals for failure to prosecute where appropriate, and has outlined the role of the appellate court as follows:

> "Thus the scope of review over an order of dismissal accorded an appellate court is extremely narrow, confined solely to whether control has been exercised within the permissible range of the trial court's discretion." *Theilmann* v. *Rutland Hospital, Inc.*, 455 F. 2d 853, 855 (2d. Cir. 1972).

See, also, *Joseph Muller Corp. Zurich* v. *Societe Anonyme de Gerance et D'Armement*, 508 F. 2d 814, 815 (2d Cir. 1974); *Edmond* v. *Moore-McCormack Lines, Inc.*, 253 F. 2d 143 (2d Cir. 1958), *cert. denied* 358 U. S. 848, 79 S. Ct. 73, 3 L. Ed. 2d 82 (1958).

Raitport's complaint was filed over three years ago. He has neither claimed to be ready for trial without discovery, nor undertaken any.[4] Instead, he has repeatedly asserted that he cannot prosecute his case without financial assistance from the courts, and has carried his unsuccessful demand for financial

4. Raitport cannot prevail against Whirlpool on the merits without, sooner or later, confronting the sworn testimony which Whirlpool filed in affidavit form at the inception of this action (App., pages A1-A10). He has yet to suggest that he can do so without discovery, nor has he advanced any reasonable basis for belief that he could do so even with discovery.

assistance all the way to the Supreme Court. For these reasons alone, the dismissal for failure to prosecute was well within the trial court's discretion.

Moreover, Raitport's unexcused failure to appear at the last pretrial conference until after it had been concluded and defense counsel had left the courthouse, is an additional reason why the dismissal was properly within the trial court's discretion. *Link* v. *Wabash Railroad Co.*, 370 U. S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962).

B. The Trial Court's Findings and Conclusions Were Adequately Stated on the Record.

Raitport argues, at page 3 of his brief, that the trial court did not make written findings of fact or conclusions of law. However, the transcript contains the trial court's careful explanation on the record of his reasons for concluding that there was such a failure to prosecute as to warrant dismissal with prejudice (App., pages A14-A15). His record explanation indicates the factual basis for his ultimate conclusion and action, satisfying the spirit and intent of the Federal Rules by providing to this Court ample basis for ascertaining that there was no abuse of discretion below. As the Court said in *Esteva* v. *House of Seagram, Inc.*, 314 F. 2d 827, 830 (7th Cir. 1963), *cert. denied* 375 U. S. 826, 84 S. Ct. 70, 11 L. Ed. 2d 59 (1963):

> "We find no merit in plaintiff's contention that the failure of the District Court to make and enter express findings of fact and conclusions of law requires a reversal of its judgment of dismissal. The summary jurisdiction here exercised was not within the purview of Rule 52(a) of the Federal Rules of Civil Procedure (28 U. S. C. A.). Plaintiff's action was not 'tried upon the facts'. It was dismissed for plaintiff's failure to proceed with the trial upon the facts at the appointed time. *And, in any event, the district judge's statement for the record was sufficient to indicate the factual basis for the ultimate conclusion and action, within the spirit and intent of Rule 52(a), and to adequately fulfill the rule's purpose as an aid to the appellate court on review.*" (emphasis supplied).

CONCLUSION.

The order of the United States District Court for the Southern District of New York, dismissing the appellant's action for failure to prosecute, should be affirmed.

Respectfully submitted,

ALVIN K. HELLERSTEIN,
ROBERT P. STEIN,
STROOCK & STROOCK & LAVAN,
61 Broadway,
New York, New York 10006,
(212) 425-5200,

STANLEY M. LIPNICK,
RICHARD K. WRAY,
ARNSTEIN, GLUCK, WEITZENFELD
& MINOW,
75th Floor, Sears Tower,
Chicago, Illinois 60606,
(312) 876-7100,
Attorneys for Whirlpool Corporation.

APPENDIX

EXHIBIT A

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF BERRIEN } ss.

GEORGE ELLSPERMANN, having first been duly sworn on oath, deposes and says the following:

1. I am employed by Whirlpool Corporation ("Whirlpool") in the capacity of Director of Procurement of its Laundry Group located in St. Joseph, Michigan.

2. My duties include direction and supervision of all purchasing by Whirlpool's Laundry Group, including purchasing of items to be used as component parts in the manufacture of appliances. My duties require me to know and implement all generally applicable purchasing policies of Whirlpool, and to determine any purchasing policies of the Laundry Group specifically.

3. Neither Whirlpool generally nor its Laundry Group specifically has any policy of unwillingness or reluctance to deal with new companies.

4. It is the policy of Whirlpool generally and of its Laundry Group specifically to purchase items used as component parts in the manufacture of appliances on the basis of Whirlpool's judgment of its best interests in maintaining and, where possible, improving the efficient manufacture, performance, safety and durability of appliances manufactured by it.

5. I have never discussed Mr. Eli Raitport or products offered for sale by Mr. Raitport with any officer, director,

employee, agent or representative of any company other than Whirlpool.

Further Affiant sayeth not.

/s/ GEORGE ELLSPERMANN
George Ellspermann

Subscribed and Sworn to before me this 18th day of Sept., 1974.

/s/ MARILYN M[illegible]LER
Notary Public

EXHIBIT B

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF BERRIEN } ss.

JOHN PIELEMEIER, having first been duly sworn on oath, deposes and says the following:

1. I am an engineer employed by Whirlpool Corporation ("Whirlpool" hereinafter) in its Laundry Engineering Division of the Laundry Group located at St. Joseph, Michigan.

2. My duties, among other responsibilities, include evaluation of items offered for sale to Whirlpool for its use as component parts for appliances manufactured by it.

3. On or about August 30, 1973, I was introduced to Mr. Eli Raitport at Whirlpool's St. Joseph, Michigan facility and was advised that Mr. Raitport was offering engineering services to Whirlpool to further develop a vibration isolator represented by illustrative samples in his possession.

4. I decided, in behalf of Whirlpool, that it had no interest in the services offered by Mr. Raitport. This decision was within the scope of my duties as an employee of Whirlpool, and was based exclusively upon my judgment of the best interests of Whirlpool in maintaining and, where possible, improving the efficient manufacture, performance, safety and durability of its products.

5. The isolator offered by Mr. Raitport was cone-shaped and made of rubber or plastic. Whirlpool now uses coiled steel springs for vibration isolation. It was my judgment that expenditure of the time and money, which would have been required to design and procure equipment suitable for testing Mr. Raitport's vibration isolator, was unwarranted.

6. My decision that Whirlpool had no interest in the services offered by Mr. Raitport was not based in whole or in part upon

any policy of unwillingness to purchase from new companies. I know of no such policy of Whirlpool Corporation and have no such policy myself.

7. I have never discussed Mr. Raitport or his products with any officer, director, employee, agent or representative of any company other than Whirlpool.

Further Affiant sayeth not.

/s/ JOHN W. PIELEMEIER
John W. Pielemeier

Subscribed and Sworn to before me this 18th day of September 1974.

/s/ MARILYN MILLER
Notary Public

EXHIBIT C

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF BERRIEN } ss.

GEORGE MYERS, having first been duly sworn on oath, deposes and says the following:

1. I am an engineer employed by Whirlpool Corporation ("Whirlpool" hereinafter) in its Laundry Engineering Division of the Laundry Group located in St. Joseph, Michigan.

2. My duties, among other responsibilities, include evaluation of items offered for sale to Whirlpool for its use as component parts for appliances manufactured by it.

3. On or about August 30, 1973, I was introduced to Mr. Eli Raitport at Whirlpool's St. Joseph, Michigan facility, and was advised that Mr. Raitport was offering for sale to Whirlpool, for its use as component parts in appliances, a switch represented by a crude sample in his possession.

4. I decided, in behalf of Whirlpool, that it had no interest in the items offered by Mr. Raitport. This decision was within the scope of my duties as an employee of Whirlpool, and was based exclusively upon my judgment of the best interests of Whirlpool in maintaining and, where possible, improving the efficient manufacture, performance, safety and durability of its products.

5. In my judgment, Whirlpool could not use the switch offered by Mr. Eli Raitport in the manufacture of Automatic Washers.

6. My decision that Whirlpool had no interest in the switch offered by Mr. Raitport was not based in whole or in part upon any policy of unwillingness to purchase from new companies. I know of no such policy of Whirlpool Corporation and have no such policy myself.

7. I have never discussed Mr. Raitport or his products with any officer, director, employee, agent or representative of any company other than Whirlpool.

Further Affiant sayeth not.

/s/ GEORGE MYERS
George Myers

Subscribed and Sworn to before me this 18th day of September, 1974.

/s/ MARILYN MILLER

EXHIBIT D

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF BERRIEN } ss.

JOHN TRAUBE, having first been duly sworn on oath, deposes and says the following:

1. I am an engineer employed by Whirlpool Corporation ("Whirlpool" hereinafter) in its Laundry Engineering Division of the Laundry Group located at St. Joseph, Michigan.

2. My duties, among other responsibilities, include evaluation of items offered for sale to Whirlpool for its use as component parts for appliances manufactured by it.

3. On or about August 30, 1973, I was introduced to Mr. Eli Raitport at Whirlpool's St. Joseph, Michigan facility, and was advised that Mr. Raitport was offering for sale to Whirlpool, for its use as component parts in appliances, a switch represented by a crude sample in his possession.

4. I decided, in behalf of Whirlpool, that it had no interest in the items offered by Mr. Raitport. This decision was within the scope of my duties as an employee of Whirlpool, and was based exclusively upon my judgment of the best interests of Whirlpool in maintaining and, where possible, improving the efficient manufacture, performance, safety and durability of its products.

5. In my judgment, Whirlpool could not use the switch offered by Mr. Eli Raitport in the manufacture of Dryers.

6. My decision that Whirlpool had no interest in the switch offered by Mr. Raitport was not based in whole or in part upon any policy of unwillingness to purchase from new companies. I know of no such policy of Whirlpool Corporation and have no such policy myself.

7. I have never discussed Mr. Raitport or his products with any officer, director, employee, agent or representative of any company other than Whirlpool.

Further Affiant sayeth not.

/s/ JOHN TRAUBE
John Traube

Subscribed and Sworn to before me this 18th day of September, 1974.

/s/ MARILYN MILLER
Notary Public

EXHIBIT E

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF BERRIEN } ss.

RONALD HAHN, having first been duly sworn on oath, deposes and says the following:

1. I am an engineer employed by Whirlpool Corporation ("Whirlpool" hereinafter) in its Laundry Engineering Division of the Laundry Group located at St. Joseph, Michigan.

2. My duties, among other responsibilities, include evaluation of items offered for sale to Whirlpool for its use as component parts for appliances manufactured by it.

3. On or about August 30, 1973, I was introduced to Mr. Eli Raitport at Whirlpool's St. Joseph, Michigan facility, and was advised that Mr. Raitport was offering for sale to Whirlpool, for its use as component parts in appliances, a switch represented by a crude sample in his possession.

4. I decided, in behalf of Whirlpool, that it had no interest in the items offered by Mr. Raitport. This decision was within the scope of my duties as an employee of Whirlpool, and was based exclusively upon my judgment of the best interests of Whirlpool in maintaining and, where possible, improving the efficient manufacture, performance, safety and durability of its products.

5. In my judgment, Whirlpool could not use the switch offered by Mr. Eli Raitport in the manufacture of Dishwashers.

6. My decision that Whirlpool had no interest in the switch offered by Mr. Raitport was not based in whole or in part upon any policy of unwillingness to purchase from new companies. I know of no such policy of Whirlpool Corporation and have no such policy myself.

7. I have never discussed Mr. Raitport of his products with any officer, director, employee, agent or representative of any company other than Whirlpool.

Further Affiant sayeth not.

/s/ RONALD HAHN
Ronald Hahn

Subscribed and Sworn to before me this 18thday of September 1974.

/s/ MARILYN MILLER
Notary Public

EXHIBIT F

Before HON. CHARLES L. BRIEANT, *District Judge.*

New York, New York
February 25, 1977—9:30 a.m.

Appearances:

Olwine, Connelly, Chase, O'Donnell & Weyher, Esqs., Attorneys for defendant Westinghouse, By: Bruce Pindyck, Esq., of Counsel.

Cahill, Gordon, Reindl & Ohl, Esqs., Attorneys for defendant RCA, By: Donald S. Parker, Esq., of Counsel.

Stroock, Stroock & Lavan, Esqs., Attorneys for defendant Whirlpool Corp.,

-and-

Aronstein, Gluck, Weitzenfeld & Minow, Esqs., By: Richard K. Wray, Esq., of Counsel.

[2] (Case called)

The Court: Where is Mr. Raitport?

Mr. Pindyck: I don't think he is here yet.

We represent defendant General Electric Corporation. I don't see Mr. Raitport in the courtroom.

The Court: The clerk informed me that Mr. Raitport has not appeared.

This matter was set for 9:15. Mr. Raitport was personally informed by me on December 7, 1976 that he should proceed with pretrial discovery as should all the parties, and he was particularly directed that he and all of you who are here were to be present before me at 9:15 this morning.

In the interim I have heard nothing of the matter except that I received a letter from the firm of Olwine, Connelly, Chase, O'Donnell & Weyher, dated February 23, addressed to the Court with a copy to Mr. Raitport, and attached to that is a transcript of a deposition.

Without characterizing it, the pages which have been attached indicate to the Court that Mr. Raitport, the pro se plaintiff in this case, does not wish to give discovery, that he has refused to provide all the underlying facts requested of him on those pages on the ground that [3] there is some unspecified privilege which allows him to refuse this information.

If he were here, I would require him to tell me what the privilege is so that I could make an intelligent ruling on it and get this case ready for trial.

I think that, on the surface of it, the portions of the transcript submitted to me show an unwillingness to proceed with the case and get it ready for trial and grant the discovery required under the rules and make the issues available to the Court for resolution.

What do you gentlemen want to do?

Mr. Pindyck: Your Honor, I'd like to move for—

The Court: Have any of you heard from him today?

Mr. Parker: No, your Honor.

Mr. Wray: No, your Honor.

The Court: Has the clerk heard from Mr. Raitport?

The Clerk: No, your Honor.

Mr. Pindyck: I'd like to move for dismissal of the action. The action was commenced approximately May of 1974 and Mr. Raitport has not prosecuted the action. The only proceedings with respect to the plaintiff have been in regard to the in forma pauperis issue.

Mr. Raitport has not sought to take any discovery [4] of the defendants. We served Mr. Raitport with a notice of deposition and a request for production of documents. He refused to produce any documents at the deposition.

The Court: Is that a matter of record in the case?

Mr. Pindyck: Yes, sir, it is.

The Court: Please make sure that the record is filed in the clerk's office.

Mr. Pindyck: Yes, sir.

The Court: I will accept your representation that there is a record of that, but it must be documented and filed.

Mr. Pindyck: When I say there is a record, there is a record in the deposition.

The Court: That is what I referred to.

Mr. Pindyck: Other than the pages that I attached to any letter to your Honor, Mr. Raitport was unwilling to answer a number of questions at the deposition that I believe were legitimate and proper.

I'd like to move for a dismissal of the action with prejudice.

The Court: How about the rest of you?

Mr. Parker: I join in Mr. Pindyck's application. I'd like to take just a minute to amplify the [5] statement of the history of the case.

This action was filed in May of 1974, and betwen May and September of '74 there were certain motions to dismiss and amended complaints filed. But between September of 1974 and June of 1976 the only activity initiated by the plaintiff was in regard to his application for in forma pauperis status.

Since June of 1976 he has not actively participated in this action or initiated any attempts for discovery or filed any motions.

Of course, I join in regard to everything else that Mr. Pindyck said.

Mr. Wray: I would also join in Mr. Pindyck's motion. I'd like to add an emphasis that the number of objections raised by Mr. Raitport at the deposition were numerous and overwhelming, probably on thirty different occasions, with regard to what I believe to be relevant information. He refused to answer questions.

He also appeared at the deposition and had in his possession several relevant documents which he has since transferred to other parties and refused to produce.

The Court: He told you he transferred them to other parties?

[6] Mr. Wray: Yes, your Honor. He said had transferred

them to shareholders in his Scientronics operation, the corporation for which he worked a few years ago.

With regard to this matter, he stated that he had several documents in his possession at the time this action was commenced in May of 1974, and that subsequently when Scientronics ceased operations he transferred these documents to the shareholders of the corporation and no longer has them in his possession.

And at page 85 of the transcript of his deposition he indicates that he will eventually have these documents but he would not produce them pursuant to the notice.

The Court: I will now find that the plaintiff has neglected to prosecute this action, that he has conducted his litigation in a frivolous fashion and in a manner which is not to be permitted in this court.

The plaintiff is an experienced and capable pro se litigant in this and other federal district courts. He simply has not complied with the obligation of discovery, which he full well knows. His entire conduct of the matter has been—risen to a level which this Court does not have to put up with.

[7] This man is accepting public assistance in Philadelphia, perfectly capable of working, and instead of working he is spending all of his time pursuing lawsuits here and elsewhere.

If he is going to do that, he probably can, but at least he must comply with the rules and tend to business and be present when directed to be present. Otherwise the Court, in its general supervisory power, will not permit this to take place.

There has been a failure to grant discovery here, which is inexcusable, a failure to attend a pretrial conference, although specifically orally directed by me on the record to do so.

I further note that on May 2, 1975 at a hearing held before me Mr. Raitport suggested to this Court that Judge Knapp of this district had been bribed. He did not undertake to tell me by whom Judge Knapp had been bribed.

It is very unfortunate that Congress, with the great backlog of bona fide litigations, civil and criminal, which this court

has, cannot undertake to regulate in some fashion the conduct of pro se litigants.

The Court will not tolerate what Mr. Raitport has done. I find there has been a neglect to prosecute, a failure to grant discovery as required by the rules and the [8] directives of this Court.

The case has not been maintained by Mr. Raitport in good faith, but, rather, that it's a frivolous lawsuit, and, accordingly, for all of those reasons, the motion is granted and the action is dismissed with prejudice. A final judgment will be entered by the clerk—or you may submit one to the judgment clerk if you gentlemen want to do that. It will save time—dismissing the action with costs.

(Time noted: 9:40 a.m.)

9:57 a.m.

The Court: Mr. Raitport, you are late in getting here and you have failed to give proper pretrial discovery in your litigation.

The attorneys representing your adversaries have already left the courthouse. They waited a considerable time for you.

Mr. Raitport: I understood it was for 10:15.

The Court: I don't see how you could possibly have any such understanding as that, because I personally gave you the time and place myself on the record.

Furthermore, I will say to you that your conduct at the deposition is inexcusable, and you are not [9] showing the proper approach to these matters. You are maintaining, in effect, a frivolous litigation and you are doing it in a frivolous and improper way.

I have dismissed your action.

That's all.

Mr. Raitport: Thank you, your Honor.

May I say one word?

The Court: No more. Go home.

(Time noted: 10:00 a.m.)

No. 77-7194

STATE OF ILLINOIS, } ss. L. Brosbrow being first duly
COUNTY OF COOK. }

sworn, deposes and says that he served two copies of the Brief

in the above entitled cause, as per statute herein made and provided, on

Eli Raitport, Esq.
1807 Mower Street
Philadelphia, Pa. 19152

Macdonald Flinn, Esq.
White & Case
14 Wall Street
New York, New York 10005

John Logan O'Donnell, Esq.
Bruce E. Pindyck, Esq.
Olwine, Connelly, Chase, O'Donnell & Weyher
299 Park Avenue
New York, New York 10017

Donald S. Parker, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

and also filed the required number of copies of the above with the

U. S. Court of Appeals, Second Circuit

this 10th day of August, A. D. 1977.

L. Brosbrow

Subscribed and sworn to before me this 10th

day of August, A. D. 1977

Leonard P. Kenston
Notary Public.

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